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MAR 03 2005

In re Application of:  
Bruce et al.  
Serial No.: 09/386,112  
Filed: August 30, 1999  
Attorney Docket No.: **AMDA.261PA**

DECISION ON PETITION  
TO WITHDRAW HOLDING OF  
ABANDONMENT

This is a decision on the petition filed September 28, 2004 to withdraw the holding of abandonment under 37 C.F.R. § 1.181 in the above identified application.

The petition is **GRANTED**.

On March 16, 2004 the Board of Patent Appeals and Interferences issued its decision affirming the rejection under 35 U.S.C. § 103 of claims 1, 2, 7, and 9 - 15 and reversing the rejections under 35 U.S.C. § 112, first and second paragraphs, of claims 1 - 16. A Notice of Abandonment was mailed on June 18, 2004 stating that the period for seeking court review of the decision has expired and there are no allowed claims.


Petitioner asserts that the application should have been returned to the examiner for further action by the examiner. In particular, petition asserts that the examiner should have mailed petitioner a notice that claims 3 - 6, 8, and 16 would be allowable if rewritten in independent form.

This argument is persuasive. When the Board affirms a rejection of an independent claim and reverses all rejections against a claim dependent thereon, the examiner should have either (1) converted the dependent claims into independent form by examiner's amendment, cancel the claims in which the rejection was affirmed, and issue the application or (2) set a 1-month time limit in which petitioner could rewrite the dependent claims in independent form. M.P.E.P. § 1214.06.

For the above-stated reason, the petition is granted. The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. The application is restored to pending status.

The application file is being forwarded to the examiner of record for consideration and prompt appropriate action.

Any inquiry concerning this petition should be directed to Jose G. Dees, Special Program Examiner, at (571) 272-1569.

  
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